

§ 9901.904

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as the exclusive representative of employees in an appropriate unit consistent with the Department's organizational structure, pursuant to 5 U.S.C. 7111 or as otherwise provided by § 9901.911.

FMCS means Federal Mediation and Conciliation Service.

Grade means a level of work under a position classification or job grading system.

Grievance means any complaint—

(1) By any employee concerning any matter relating to the conditions of employment of the employee;

(2) By any labor organization concerning any matter relating to the conditions of employment of any employee; or

(3) By any employee, labor organization, or the Department concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, regulation, or issuance issued for the purpose of affecting conditions of employment.

Implementing issuance or issuances has the meaning given that term in § 9901.103.

Issuance or issuances means a document issued by the Secretary, Deputy Secretary, Principal Staff Assistants (as authorized by the Secretary), or Secretaries of the Military Departments to carry out a policy or procedure of the Department other than those issuances implementing this part.

Labor organization has the meaning given that term in § 9901.103.

Management official means an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department.

Person has the meaning given that term in 5 U.S.C. 7103(a)(1).

Professional employee has the meaning given that term in 5 U.S.C. 7103(a)(15).

Supervisor means an individual employed by the Department having authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, re-

call, suspend, discipline, or remove employees; to adjust their grievances; or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority. It also means an individual employed by the Department who exercises supervisory authority over military members of the armed services, such as directing or assigning work or evaluating or recommending evaluations.

§ 9901.904 Coverage.

(a) *Employees covered.* This subpart applies to eligible DoD employees, subject to a determination by the Secretary under § 9901.102(b)(1), except as provided in paragraph (b) of this section. DoD employees who would otherwise be eligible for bargaining unit membership under 5 U.S.C. chapter 71, as modified by § 9901.912, are eligible for bargaining unit membership under this subpart. In addition, this subpart applies to an employee whose employment in the Department has ceased because of any unfair labor practice under § 9901.916 of this subpart and who has not obtained any other regular and substantially equivalent employment.

(b) *Employees excluded.* This subpart does not apply to—

(1) An alien or noncitizen of the United States who occupies a position outside the United States;

(2) A military member of the armed services;

(3) A supervisor or a management official;

(4) Any person who participates in a strike in violation of 5 U.S.C. 7311; or

(5) Any employee excluded pursuant to § 9901.912 or any other legal authority.

§ 9901.905 Impact on existing agreements.

(a) Any provision of a collective bargaining agreement that is inconsistent with this part and/or implementing

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issuances is unenforceable on the effective date of the applicable subpart(s) or such issuances. The exclusive representative may appeal a determination that a provision is unenforceable to the National Security Labor Relations Board in accordance with the procedures and time limits pursuant to § 9901.908 and the Board's regulations. However, the Secretary, in his or her sole and exclusive discretion, may continue all or part of a particular provision(s) with respect to a specific category or categories of employees and may cancel such continuation at any time; such determinations are not precedential.

(b) Upon request by an exclusive representative, the parties will have 60 days after the effective date of coverage under the applicable subpart and/or implementing issuance to bring into conformance those remaining negotiable collective bargaining agreement provisions directly affected by the collective bargaining agreement provisions rendered unenforceable by the applicable subpart and/or implementing issuance. During that period, the parties may utilize the negotiation impasse provisions of § 9901.920 to assist in resolving any impasses.

(c) Any provision of a collective bargaining agreement that is inconsistent with an issuance remains in effect until the expiration, renewal, or extension of the term of the agreement, whichever occurs first.

§ 9901.906 Employee rights.

Each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee will be protected in the exercise of such right. Except as otherwise provided under this subpart, such right includes the right—

(a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

(b) To engage in collective bargaining with respect to conditions of

employment through representatives chosen by employees under this subpart.

§ 9901.907 National Security Labor Relations Board.

(a) The Secretary has sole, exclusive, and unreviewable authority to determine the effective date for the establishment of the National Security Labor Relations Board.

(b)(1) The National Security Labor Relations Board is composed of at least three members who are appointed by the Secretary for terms of 3 years, except that the appointments of the initial Board members will be for terms of 1, 2, and 3 years, respectively. The Secretary may extend the term of any member beyond 3 years when necessary to provide for an orderly transition and/or appoint the member for up to two additional 1-year terms. The Secretary, in his or her sole and exclusive discretion, may appoint additional members to the Board; in so doing, he or she will make such appointments to ensure that the Board consists of an odd number of members.

(2) Members of the Board will be independent, distinguished citizens of the United States who are well known for their integrity, impartiality, and expertise in labor relations, and/or the DoD mission and/or other related national security matters, and will be able to acquire and maintain an appropriate security clearance. Members may be removed by the Secretary only for inefficiency, neglect of duty, or malfeasance in office.

(3) An individual chosen to fill a vacancy on the Board will be appointed for the unexpired term of the member who is replaced and, at the Secretary's option, an additional term or terms.

(c) *Appointment of the Chair.* The Secretary, at his or her sole and exclusive discretion, will appoint one member to serve as Chair of the NSLRB.

(d) *Appointment procedures for non-Chair NSLRB members.* (1) The appointments of the two non-Chair NSLRB members will be made by the Secretary, at his or her sole and exclusive discretion, after he or she considers any lists of nominees submitted by labor organizations that represent employees in the Department.